

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LEON JOHNSON #427806,

Petitioner,

v.

Case No. 2:08-cv-171
HON. R. ALLAN EDGAR

GERALD HOFBAUER,

Respondent.

MEMORANDUM AND ORDER

Petitioner Leon Johnson, a Michigan state prisoner in the custody of the Michigan Department of Corrections, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. On May 31, 2011, Magistrate Judge Greeley submitted his report and recommendation. [Doc. No. 21]. It is recommended that the habeas petition be denied and dismissed with prejudice, and that a certificate of appealability be denied under 28 U.S.C. § 2253(c)(2). Petitioner Johnson has not timely filed any objections to the report and recommendation.

After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). The Court concludes that the petition for writ of habeas corpus brought under 28 U.S.C. § 2254 is without merit. The petition shall be **DENIED and DISMISSED WITH PREJUDICE**.

If petitioner Johnson files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App.

P. 22(b)(1); and *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), for the same reasons expressed in the report and recommendation. Petitioner Johnson has not made a substantial showing of the denial of a federal constitutional right. Reasonable jurists could not find it debatable whether the habeas petition has been properly dismissed.

The Court **CERTIFIES** pursuant to 28 U.S.C. § 1915(3) and Fed. R. App. P. 24(a) that any appeal from the decision and judgment in this case would be frivolous and not taken in good faith.

A separate judgment will enter.

SO ORDERED.

Dated: June 23, 2011.

/s/ *R. Allan Edgar*

R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE